IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12483 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRAJLAL GORDHANBHAI PATEL

Versus

STATE F GUJARAT

Appearance:

1. Special Civil Application No. 12483 of 2004

MR MB PARIKH for Petitioner No. 1

Mr.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 07/12/2004

ORAL JUDGEMENT

Rule. Mr.Desai, Ld.AGP appears for respondent

Nos 1 to 3 waives service of rule on behalf of respondents. With the consent of learned advocates for parties, matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner was holding agricultural lands admeasuring 3 acres 25 gunthas bearing S.No.24 at village Dudharej, taluka Wadhwan and the petitioner applied for permission to convert the land for NA purpose as per order dated 5.8.98. It appears that thereafter the permission has been granted by the Collector on 27.8.98. The petitioner continued the agricultural operations over the land in question and not used the land for NA purpose for which the permission was granted and therefore the show cause notice, dated 20.5.2003 was issued by the Collector for taking action for committing breach of permission for NA purpose. The petitioner replied to the said show cause notice and submitted that there was situation of drought and as a result thereof the petitioner could not comply with the conditions of NA permission and therefore prayed for extension of two years. The petitioner also submitted before the District Collector that since the breach is for the first time the same may be condoned and the petitioner shall complete the construction over the land in question within two years from 17.7.2003. It appears that thereafter the District Collector considered the matter and found that the petitioner has continued the agricultural operations over the land in question and earned income after the land was converted for NA purpose and granted extension of two years on payment of fine of 40 times of revenue assessment for each year, i.e.for 2001-02 and 2002-03. The petitioner carried the matter in revision before the State Govt and ultimately the said revision has been dismissed as per the order, dated 6.3.2004 and under the circumstances the petitioner approached this court by preferring the present petition.

3. Upon hearing Mr.Parikh, Ld.advocate for the petitioner and Mr.Desai, Ld.AGP for respondents, it appears that so far as the imposition of penalty for breach of conditions of NA is concerned, the issue is covered by the decision of this court taken in Spl.Civil Application No.4650/04, dated 6.12.2004 and therefore when it is matter of first breach the maximum penalty could be imposed is of 10 times of revenue assessment and the extension can be granted for a period of two years. If it is a matter of breach for second time while granting further extension, the maximum penalty can be imposed is of 20 times of revenue assessment. As per the view taken in the aforesaid matter, rule provides for enabling power with the Collector to impose penalty of 40

times of revenue assessment, but in view of the instructions issued by the Government referred to in the said decision read with the reasons recorded therein, the penalty, at the most, can be imposed by the Collector is of 10 times of the revenue assessment, while considering the case for first breach and the Collector ought to have granted extension of two years. Even if is considered that the said period of two years has expired in the year 2003 and the land is uptil now not used for residential purpose or any construction is made. While considering the case for second extension, which would be upto 27.8.05, the penalty could be imposed, at the most, of 20 times of revenue assessment. It may be recorded that even before the Collector the petitioner has given undertaking to comply with all the conditions including for making construction over the land in question within a period of two years from 17.7.03 and therefore the order passed by the Collector and its confirmation thereof by the State Govt imposing penalty exceeding 10 times of revenue assessment for the first breach and 20 times of revenue assessment for second breach would illegal and can not be maintained in the eye of law.

4. The additional contention which arises for consideration in this petition is that while recording the reasons the lower authorities have proceeded on the basis that after the land was converted into NA purpose, the agricultural operations are continued and the petitioner has earned income therefrom and therefore also it can be said that there is breach of condition. There is no dispute on the point that the land prior to NA permission was not used as agricultural land. Therefore, the basic character of the land at the time when the permission was applied for was for agricultural land. Mere application for NA and grant of permission for Non-agricultural use can not be a compelling circumstance for using the land for nonagricultural purpose and such permission can at the most be read as enabling to the holder of the land to use it for nonagricultural purpose. If the land is partly used for nonagricultural purpose and partly used for agricultural purpose or if the land is used for other than agriculture purpose as per NA permission and thereafter the conditions are not complied with, it may stand on a different footing, but merely because the holder of the land has not at all taken the benefit of NA permission and has continued with agricultural operations over the land in question can not be said to be a valid ground for concluding breach of conditions of NA permission. The word "permission" itself means that the holder of the land is permitted to use the land for nonagricultural purpose. After

obtaining permission, if the holder of the land is not desirous to take the benefit, he is not prevented from continuing with the original character of the land which was agricultural land. If the conditions of NA permission are not complied with or the NA permission is not acted upon, the permission may lapse, or in a given case, the extension may be granted is a different aspect. If the holder of the land is desirous to continue with the benefit of NA permission, he may apply for extension and while granting extension the penalty may be imposed upon him, but, merely because the agricultural operations are continued over the land for which permission is granted, and when the land is not used for the purpose other than agriculture, that itself can not be said to be a valid ground for concluding the breach of conditions of NA permission. In the present case, the petitioner himself was desirous to use the land for NA purpose and from the application submitted by the petitioner in response to the show cause notice, it appears that he is desirous to continue with the NA permission and therefore the Collector while granting extension could have imposed the penalty as referred hereinabove, but it appears that the ground considered by the Collector that the petitioner continued with the agricultural operations and therefore committed breach of conditions of NA permission to that extent can not be maintained. I find it proper to leave the matter at that stage without observing further because in view of the intention shown by the petitioner to continue with the character of the land as NA, the imposition of penalty to the extent of 10 times of revenue assessment and 20 times of revenue assessment can be maintained.

5. In view of the above, the order passed by the Collector and its confirmation thereof by the State Govt for imposition of penalty exceeding 10 times of revenue assessment for the first breach and 20 times of revenue assessment for the second breach are quashed and set aside. It is further clarified that as a consequence of this order, the petitioner will be required to pay in all the penalty of 30 times of revenue assessment and will have to comply with the conditions of NA permission including for making construction on or before 27.8.2005.

6. The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

7.12.2004 (JAYANT PATEL,J)